

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**LAURA A. BEAGLEY**  
Claimant

VS.

**PRESBYTERIAN MANORS, INC.**  
Self-Insured Respondent

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Docket No. 1,026,679

**ORDER**

The self-insured respondent requests review of the February 10, 2006 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

At the conclusion of the preliminary hearing, the Administrative Law Judge (ALJ) told the parties that he was finding the claim compensable. The ALJ further ordered respondent to pay temporary total disability benefits and authorized Dr. Randall K. Hildebrand as claimant's treating physician.

The respondent requests review of the following: (1) whether the claimant's accidental injury arose out of and in the course of employment; (2) whether the ALJ erred in awarding temporary total disability benefits and medical treatment; (3) whether claimant's preexisting health condition estops her from receiving workers compensation benefits; and, (4) whether the ALJ erred in ruling without considering all of the evidence.

Conversely, claimant argues the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Initially, respondent argues that the ALJ entered his decision without considering two evidentiary depositions taken before the preliminary hearing was held. The respondent contends the deposition transcripts were e-mailed to the ALJ the day before the preliminary hearing. And there was a misunderstanding whether such transcripts were to be included in the evidentiary record at preliminary hearing.

At the beginning of the preliminary hearing, the parties' evidentiary exhibits were identified, offered and received. No mention was made on the record regarding respondent's two evidentiary depositions. The preliminary hearing proceeded with testimony from claimant and a witness for respondent. At the conclusion of the hearing, the ALJ asked if there was any other evidence or testimony. Both attorneys replied, "No", whereupon the ALJ announced his decision finding the claim compensable.

After a pause in the proceedings the following colloquy occurred between the ALJ and counsel:

THE COURT: I'm going to recall for record purposes the Laura Beagley versus Presbyterian Manor case, Docket No. 1,026,679. There's apparently additional evidence that Ms. Wohlgemuth wanted me to consider, some transcripts of depositions that I received electronically last night after 5 o'clock. Ms. Wohlgemuth?

MS. WOHLGEMUTH: Yes, Your Honor, it was my understanding that the record was already opened when you discussed the fact that you had the transmitted copies of the depositions, which are of Kim Balding and Amber Griffin, and that they were considered as part of respondent's set of evidence when we were marking the exhibits and offering the exhibits, and so I would just ask that those be a part of the record if they aren't already. I'm not sure what the record has --

THE COURT: Mr. Mann?

MR. MANN: Your Honor, I guess it's the claimant's position that we had the hearing, the evidence was marked and admitted specifically by order of the Court. The Court has made its ruling. Certainly I think the respondent can come back at any time in the future and schedule another preliminary hearing, but we'd ask that the Court stand on its order.

THE COURT: Well, this puts me in a real pickle. We did not have any discussion on the record about these transcripts. Had we had a discussion on the record and I would have known that they were to be considered in this preliminary hearing, then I would have been happy to consider them and defer ruling until after I had had a chance to read them. I received two transcripts, actually four, electronically after 5 o'clock last night and did not know which case they pertained to. The message from the court reporter that they were coming did not identify counsel, so I didn't know which file it was about, and when I asked if there was any other evidence and there was none, I proceeded to determine the issues based upon the evidence presented.

MS. WOHLGEMUTH: Your Honor, I would just - - I'm sorry to insert this here, but I feel like the transcripts, even though you hadn't read them, you advised both me and Mr. Mann that you had the transcripts, that you hadn't had a chance

to read them because they didn't get there until after 5 o'clock, and so you would have to, you know, defer this to a later time to make a ruling so that you would have a chance to consider those evidentiary deposition. That was my understanding that that was on the record and that it was going to be part of respondent's case in chief and that those were just going to be considered later by the Court.

THE COURT: I'm sorry to differ with you. I had that discussion in the context of several attorneys milling about the room and I was not identifying you in particular. Mr. Mann asked about depositions. I didn't know that this was a case involving you. I didn't know from the court reporter, I didn't know from you that these deposition transcripts were in your case. They weren't identified by case, they were just - - the files arrived - -

MS. WOHLGEMUTH: Your Honor, if you will open - -

THE COURT: I cannot open that. I don't have the e-tran viewer here. The file names are Colston, White - -

MS. WOHLGEMUTH: Your Honor, I received an e-mail from the court reporter service and it was at 4:50 yesterday afternoon, despite the fact that I thought they were going to arrive earlier in the week, but the transcripts were sent to you and I have a copy of an e-mail that - -

THE COURT: Are you calling me a liar at this point, Ms. Wohlgemuth? And what is your point that you got them at 4:50 and I didn't get them until after 5 o'clock? What's the point of this dispute?

MS. WOHLGEMUTH: The dispute, Your Honor, is the fact that the court reporter did identify which case they were in reference to.

THE COURT: I'll show you the file, Ms. Wohlgemuth, as long as you're calling me a liar. The files are identified now at Balding PTX, and what's the other file? You look for this icon, you'll identify the PTX files that arrived, White, Colston. Those do not identify a claimant, do they, or a respondent, do they?

MS. WOHLGEMUTH: I'm just wanting to make clear that my e-mail from the court reporter had the case on it and it was a cc of a letter to you.

THE COURT: The record is closed. I made my decision. I didn't have any proffer of additional evidence, nor was there any request on the record that I defer my ruling to consider these transcripts, so the decision stands as made. You can appeal it or you can file for a new preliminary hearing based upon that evidence. This record is concluded. Thank you.<sup>1</sup>

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<sup>1</sup> P.H. Trans. at 63-67.

Initially, the Board notes that the fact when the ALJ announced his decision on the record at the conclusion of the February 10, 2006 preliminary hearing it did not constitute a binding order which would preclude consideration of the two deposition transcripts. K.S.A. 44-525(a) provides in pertinent part:

Every finding or award of compensation shall be in writing signed and acknowledged by the administrative law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. The award of the administrative law judge shall be effective the day following the date noted in the award.

The foregoing statute specifically requires that every finding of an ALJ shall be in writing and signed by the Judge. In addition, the statute specifically provides the effective date of the decision shall be the day following the date noted in the decision. Accordingly, the comments made from the bench by the ALJ did not constitute a binding Order until written, signed and dated. Consequently, the ALJ could have retracted his verbal announcement and delayed his decision until after the two deposition transcripts were reviewed.

Furthermore, an ALJ has the authority to reopen a claim to take additional evidence upon his or her own motion. Accordingly, ALJs upon their own initiative can determine that good cause exists to reopen the record to receive additional evidence. Moreover, it has long been the law in workers compensation that the administrative law judge is not bound by the technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and employer an expeditious hearing and act reasonably without partiality.<sup>2</sup> In fact, any procedure which is appropriate and not prohibited by the Workers Compensation Act may be employed by the administrative law judge.<sup>3</sup>

At the conclusion of the hearing the ALJ asked if there was additional evidence and both parties indicated there was no further evidence. Nonetheless respondent thought its two deposition transcripts were part of the evidentiary record based upon conversations that had apparently occurred off the record. After the announcement of his decision at the conclusion of the hearing, the ALJ reopened the record to entertain respondent's request that the ALJ consider as part of the record the two deposition transcripts.

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<sup>2</sup> *Bahr v. Iowa Beef Processors, Inc.*, 8 Kan. App. 2d 627, 663 P.2d 1144, rev. denied 233 Kan. 1091 (1983).

<sup>3</sup> *Bushey v. Plastic Fabricating Co.*, 213 Kan. 121, 515 P.2d 735 (1973).

K.S.A. 44-534a(2) provides:

Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, **no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues.** (Emphasis added).

After the record was reopened it was undisputed that there were two evidentiary depositions that respondent requested be included in the record and considered by the ALJ. K.S.A. 44-534a(2) requires the employer be afforded the opportunity to present evidence on disputed issues. Accordingly, the ALJ's Order is reversed and the matter is remanded to the ALJ for consideration of the two deposition transcripts.

**WHEREFORE**, it is the finding of the Board that the Order of Administrative Law Judge Bruce E. Moore dated February 10, 2006, is reversed and remanded for further proceeding consistent with this decision.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2006.

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BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant  
Kathleen N. Wohlgemuth, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director